

**STATE OF INDIANA  
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF</b>	)	
	)	
<b>OXFORD INN, INC.</b>	)	
<b>d/b/a 4 THE GOOD TIMES</b>	)	<b>PERMIT NO. RR49-04542</b>
<b>2009 EAST MINNESOTA AVENUE</b>	)	
<b>INDIANAPOLIS, INDIANA 46203</b>	)	
	)	
<b>Applicant.</b>	)	

**PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Oxford Inn, Inc., d/b/a 4 the Good Times, 2009 East Minnesota Avenue, Indianapolis, Indiana 46203, permit number RR49-04542 (“Permittee”), is the applicant for renewal of a type 210<sup>1</sup> Alcohol and Tobacco Commission (“Commission”) permit. The application for renewal was assigned to the Alcoholic Beverage Board of Marion County (“Local Board”). The Local Board held a hearing on October 16, 2006, and voted four (4) to zero (0) with respect to this permit. On November 14, 2006, the Commission voted to deny the application at its regularly held meeting.

The Permittee filed a timely Notice of Appeal and the matter was assigned to Commission Hearing Judge U-Jung Choe (“Hearing Judge”). The matter was set for hearing on August 30, 2007 and at that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. The Hearing Judge, having reviewed the tape-recorded transcript of the Local Board hearing (“LB Hearing”), the evidence submitted to the Commission during the appeal hearing (“ATC Hearing”), and contents of the entire Commission file (“ATC File”),

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<sup>1</sup> Liquor, beer and wine (restaurant) retailer located in an incorporated area.

now tenders her Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

## **II. EVIDENCE BEFORE THE LOCAL BOARD**

A. The following individuals testified before the Local Board in favor of the Permittee in this cause:

1. Lisa McKinney Goldner, attorney for the Permittee;
2. Joe Bruce, Permittee; and,
3. Theresa Bruce; wife of Permittee.

The following individuals testified before the Local Board against the Permittee in this cause:

1. David Hoffman, IPD Field Sergeant;
2. Rick Faulkner, IPD Officer;
3. Earl Graybeal, IPD Officer;
4. Brett Brandenburg, Excise Officer;
5. David Kinsey, IPD Officer;
6. Brett McDonald, IPD Officer; and,
7. Marnie Bader, IPD Representative.

B. The following evidence was introduced and admitted before the Local Board in favor of the Permittee in this cause:

1. Statement of Joe and Theresa Bruce;
2. Copies of all employee permits;
3. Copies of all server training records;
4. Summary of all security measures;
5. Permittee's menu;
6. Officer and Acceptance of Settlement executed on March 22, 2006; and,
7. Parties Agreed Disposition affirmed by the Commission on April 11, 2006.

C. The following evidence was introduced and admitted before the Local Board against the Permittee in this cause:

1. Case Report, Indianapolis Police Department dated January 11, 2006;
2. Photographs taken inside the permit premises; and,
3. Case Report, Indiana State Excise Police dated January 11, 2006.

### **III. EVIDENCE BEFORE THE COMMISSION**

A. The following individuals testified before the Commission in favor of the Permittee in this cause:

1. Mark Webb, attorney for the Permittee;
2. Joe Bruce, Permittee;
3. Theresa Bruce, wife of Permittee;
4. Ashley York, bartender for Permittee;
5. Charles A. Lewis, patron of the Permittee;
6. William Strode, patron of the Permittee;
7. Danny Severance, patron of the Permittee;
8. Danny Severance, Jr., patron of the Permittee;
9. George Murphy, patron of the Permittee;
10. Brenda Wright, friend of the Permittee;
11. Leroy Smith, rebuttal witness; and,
12. Christine Noel, patron of the Permittee.

B. The following individuals testified before the Commission against the Permittee in this cause:

1. Charlie Brown, remonstrator.

C. The following evidence was introduced and admitted before the Commission in favor of the Permittee in this cause:

1. Letter from Joe Bruce to Indiana State Excise Police Officer Brett Brandenburg;
2. Letter from Joe and Theresa Bruce to the Indiana Alcohol & Tobacco Commission and the Indianapolis Police Department;
3. Group exhibit - Letters in support of the Permittee;
4. Group exhibit – Petitions in support of the Permittee;
5. Permittee's menu;
6. Table outlining total monthly food sales versus total monthly bar sales from July 2006 to July 2007;
7. Copies of server training records;
8. Summary of Commission violations from January 2003 to March 2005;
9. Photographs of interior of the permit premises;
10. List of individuals permanently "barred" from the permit premises; and,
11. List of prescription medications taken by Joe Bruce; and,
12. Letter to the Commission from Joe and Theresa Bruce.<sup>2</sup>

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<sup>2</sup> This exhibit was tendered as an additional exhibit after the ATC Hearing was concluded.

D. The following evidence was introduced and admitted before the Commission against the Permittee in this cause:

1. Indianapolis Police Department Case Report, No. 06-0013374 dated January 11, 2006.

#### **IV. FINDINGS OF FACT**

1. Oxford Inn, Inc., d/b/a 4 the Good Times, 2009 East Minnesota Avenue, Indianapolis, Indiana 46203, permit number RR49-04542, is the applicant for renewal of a Type 210 permit. (ATC File).

2. The Permittee meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2, Ind. Code § 7.1-3-9-8 and Ind. Code § 7.1-3-14-3. (LB Hearing; ATC Hearing).

3. The permit is not located within two hundred feet (200') of a church or school. (ATC File; Local Board Hearing; ATC Hearing).

4. The permit is located in a commercial location and is not located in a residential district as referred to in Ind. Code § 7.1-3-19-13 and 905 IAC 1-18-1. (ATC File; ATC Hearing).

5. On or about January 11, 2006, Permittee was cited by the Indiana State Excise Police for (i) employee acting without a permit, Ind. Code § 7.1-5-6-3; (ii) employer responsible for records and permits, 905 IAC 1-12.1-2; (iii) sale of alcoholic beverage to an intoxicated person, Ind. Code § 7.1-5-10-15; (iv) hindering law enforcement, Ind. Code § 7.1-5-8-1; and, (v) public nuisance; to wit: fight involving weapon, 905 IAC 1-27-2 ("Violations"). (ATC Records).

6. On March 22, 2006, the Commission Prosecutor and the Permittee settled the Violations as follows: (i) employee working without a permit and record of permits required, Ind. Code § 7.1-5-6-3 and 905 IAC 1-12.1-2 – Two Hundred Fifty Dollar (\$250) fine; (ii) sale

of alcoholic beverages to an intoxicated person, Ind. Code § 7.1-5-10-15 – deferred judgment/no finding; and, (iii) hindering law enforcement & public nuisance, to wit: fight involving weapon – Two Hundred Fifty Dollar (\$250) fine (“Settlement Agreement”). (ATC Records).

7. The Commission adopted the Settlement Agreement on April 11, 2006. (ATC Records).

8. As a result of the Violations, the Permittee took steps to avoid the potential for violations in the future. (LB Hearing, ATC Hearing).

9. The Permittee’s employees are extensively trained to avoid problems with theft and the sale of alcoholic beverages to minors. (LB Hearing, ATC Hearing).

10. The Permittee maintains and operates security cameras as a security precaution inside and outside the permit premises. (LB Hearing, ATC Hearing).

11. The Permittee secured areas of the permit premises not intended for access by the general public. (LB Hearing, ATC Hearing).

12. Permittee periodically verifies employee permits are current. (ATC Hearing).

13. Permittee disallows problematic customers from patronizing the permit premises. (ATC Hearing).

14. Permittee acquired an identification checking book as a resource to aid in the identification of false IDs and underaged patrons. (ATC Hearing).

15. Permittee requires two (2) pieces of identification from customers who appear less than thirty (30) years of age. (ATC Hearing).

16. Permittee is current on employee server training programs. (ATC Hearing).

17. The Permittee presented evidence of good moral character and good repute in the community including but not limited to (i) testimony of patrons and employees; (ii) letters of support from friends, employees and patrons; and, (iii) petitions in support. (LB Hearing; ATC Hearing; ATC File).

18. Eleven (11) members of the community appeared personally before the Commission to testify on behalf of the Permittee; whereas, only one (1) member of the community appeared personally to testify in opposition to the Permittee. (ATC Hearing).

19. Permittee submitted twenty eight (28) letters of support to the Commission; whereas, zero (0) letters in opposition were submitted to the Commission. (ATC Hearing).

20. Permittee submitted to the Commission petitions in support containing two hundred fifty four (254) signatures; whereas, zero (0) petitions in opposition were submitted to the Commission. (ATC Hearing).

21. The weight of the evidence, including testimony, letters of support and petitions, establishes that the Permittee is of good moral character and of good repute in the community as required by 905 IAC 1-27-1. (LB Hearing; ATC Hearing).

22. The Permittee submitted substantial evidence that it remains qualified to hold a Type 210 permit. (LB Hearing; ATC Hearing).

23. The continued operation of the permit premises and renewal of this permit will not result in any adverse effect on the surrounding neighborhood. (LB Hearing, ATC Hearing).

24. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission including a public hearing, and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).
6. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).
7. The Applicant is a fit and proper applicant, has maintained a reputation for decency and law obedience and is well qualified to hold an alcoholic beverage permit under Indiana law. 905 IAC 1-27-1 and Ind. Code § 7.1-3-9-10.
8. Applicant is of good moral character and in good repute in the community in which it does business and is qualified to hold the permit it seeks. Ind. Code § 7.1-3-4-2(a)(2)(A).

9. The permit premises is not in a residential district. Ind. Code § 7.1-3-19-13 and 905 IAC 1-18-1.

10. The permit premises is more than 200 feet from a church or school. (ATC File). Ind. Code § 7.1-3-21-10 and Ind. Code § 7.1-3-21-11.

11. The Permittee is not disqualified from holding a Commission liquor, beer and wine retailer permit. Ind. Code § 7.1-3-4-2, Ind. Code § 7.1-3-9-8 and Ind. Code § 7.1-3-14-3.

12. All laws shall be general and administered with uniform application throughout the State. Ind. Constitution, Art. IV, Sec. 23; *See also, Indiana Alcoholic Beverage Commission v. Osco Drug*, 431 N.E.2d 823, 831 (Ind. App. 1982).

13. To deny the application for renewal while granting other similarly situated permittees' applications would be arbitrary and capricious and otherwise not in accordance with the law. Ind. Code § 7.1-3-19-11.

14. The Local Board denied this application without sufficient evidence to support a finding that this permit should not be renewed.

15. A local board's recommendation is clearly erroneous when there is a lack of substantial evidence to support the recommendation. Ind. Code § 7.1-3-19-11.

16. The Commission may decline to follow the recommendation of a local board where the recommendation is not based upon substantial evidence. *Id.*

17. The Permittee has submitted substantial evidence that it is qualified to hold a Commission Type 210 liquor, beer and wine retailer permit. (LB Hearing and ATC Hearing).

18. The Commission may reverse a local board's action in denying an application for a permit if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power,



privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

19. The Local Board's action in denying the application for renewal of the permit of this Permittee in this matter was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; and/or (e) unsupported by substantial evidence.

20. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the finding of the Local Board to recommend denial of the renewal of the permit in this matter was arbitrary and capricious, not based on substantial evidence and contrary to law and cannot be sustained. It is further Ordered, Adjudged and Decreed that that the evidence adduced at the ATC Hearing was in favor of the Permittee and against the recommendation of the Local Board. The appeal of Permittee, Oxford Inn, Inc., d/b/a 4 the Good Times, 2009 East Minnesota Avenue, Indianapolis, Indiana 46203 for the renewal of this Type 210 permit no. RR45-04542 is approved, the recommendation of the Local Board in this matter is reversed, and renewal of the permit applied for herein is hereby GRANTED.

DATED: \_\_\_\_\_

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U-Jung Choe, Hearing Judge